



Paper No. 4

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OFFICE OF PETITIONS

In re Application of	:
Derek Van Der Kooy	: DECISION DISMISSING
Application No. 09/966,768	: PETITION
Filed: 28 September 2001	:
Att'y Dkt. No. Bereskin & Parr	:

This is a decision on the petition filed on 29 January, 2002, which is treated as a petition requesting that the Notice to File Missing Parts of Nonprovisional Application, mailed on 15 November, 2001, be vacated to the extent that it stated that Pages 62-64 of the specification appeared to have been omitted from the application.

The petition is dismissed.

On 28 September, 2001, the application was filed.

On 16 November, 2001, Initial Patent Examination Division mailed a "Notice to File Missing Parts of Nonprovisional Application" stating that, *inter alia*, the application had been accorded a filing date of 28 September, 2001, but that pages 62-64 of the specification (description and claims) appeared to have been omitted.

In response, on 29 January, 2002, the present petition was filed, accompanied by authorization to charge counsel's deposit account for the requisite petition fee. Petitioners assert that pages 62-64 of the specification were not missing. Petitioner's concede, however, that the page number on page 64 was partly obscured during transmission so that the page number appears to be "61" rather than "64". Petitioner has also included a copy of an itemized postcard receipt.¹

¹It is noted that although petitioner's postcard receipt itemizes 68 sheets of specification and 6 sheets of sequence listing, a review of the official file reveals that 71 pages of specification, not including the 6 pages of sequence listing which are commingled with the specification and claims, were received.

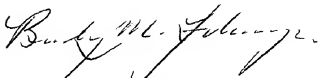
Upon review of the official file, pages 62-64 of the specification have been located among the application papers filed on 28 September, 2001. However, the page number on page 64 of the specification appears to be "61". It is obvious from the petition that no pages of specification were actually missing on 28 September, 2001. However, page 64 of the specification was misnumbered due to applicant's filing error. Petitioner should note that the pages of the specification including claims and abstract, however, must be numbered consecutively starting with 1.² However, the "Notice to File Missing Parts" mailed 16 November, 2001, was correct in stating that Page 64 of the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be vacated.

Accordingly, the petition is dismissed. The application has been processed for filing date purposes using the application papers filed on 28 September, 2001. The copy of the original application papers supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Receipt is also acknowledged of the substitute specification filed on 29 January, 2002.

As the petition was not due to an error on the part of the USPTO, the petition fee of \$130.00 will be assessed to counsel's deposit account, No. 04-1406.

The application will be returned to the Office of Initial Patent Examination for further processing with a filing date of 28 September, 2001, using the application papers supplied on that date.

Telephone inquiries should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.


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²37 CFR 1.52(b) (5).